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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 UNITED STATES of AMERICA,

11 Plaintiff,

12 v.

13 HENRY C. ROSENAU,

14 Defendant.

CASE NO. CR06-157 MJP

ORDER ON MOTION FOR  
AUTHORIZATION OF WITNESS  
DEPOSITION

15  
16 The Court, having received and reviewed:

- 17 1. Government's Motion for Authorization of Witness Depositions (Dkt. No. 27)  
18 2. Defendant's Brief in Opposition to Government's Motion for Authorization of  
19 Witness Depositions (Dkt. No. 28)

20 and all attached declarations and exhibits, makes the following ruling:

21 IT IS ORDERED that the motion is DENIED.

22 The party seeking a deposition bears the burden of demonstrating that "exceptional  
23 circumstances" require the preservation of testimony through a deposition. United States v.  
24 Kelley, 36 F.2d 1118 (D.C. Cir. 1994)(citing United States v. Ismaili, 828 F.2d 153, 159 (3rd

1 Cir. 1987), *cert. denied*, 485 U.S. 935, 108 S.Ct. 1110 (1988); *accord* United States v. Drogoul,  
2 1 F.3d 1546 911th Cir. 1993). The government has made no showing of exceptional  
3 circumstances.

4 The denial is without prejudice and the government is free to resubmit the request,  
5 accompanied by sufficient corroborating facts to satisfy the “exceptional circumstances”  
6 requirement. Among the questions which came to the Court’s mind upon reviewing the motion  
7 were:

8 Is the prospective deponent’s refusal to travel to the United States to be deposed merely a  
9 personal preference? Are there any factors which prevent this witness from crossing the U.S. –  
10 Canadian border?

11 What are the circumstances which necessitate preserving this witness’s testimony?

12 Would it be possible, through the use of Skype or some other video conferencing  
13 technology, to secure the witness’s testimony at trial without the necessity of traveling to Canada  
14 for a deposition?

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16 The clerk is ordered to provide copies of this order to all counsel.

17 Dated September 7, 2011.

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21 Marsha J. Pechman  
22 United States District Judge  
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